

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**MATT MCCORMICK, INDIVIDUALLY
AND ON BEHALF TWO CLASSES**

Plaintiff,

v.

ICE ENTERPRISES, INC.

Defendant.

§
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§

Civil Action No. _____

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446, Defendant ICE Enterprises, Inc.¹ (hereafter “Defendant”), hereby gives notice and removes to this Court the state-court lawsuit described below, and as grounds for removal states as follows:

NATURE OF THE ACTION

1. On September 2, 2022, Plaintiff Matt McCormick, individually and on behalf two classes (“Plaintiff”) commenced the matter styled *Matt McCormick, individually and on behalf two classes v. ICE Enterprises, Inc.* in the District Court of Denton County, Texas, 431st Judicial District, and bearing Cause No. 22-7396-431 (the “State Court Action”). A true and copy of Plaintiff’s Original Individual and Class Petition (the “Petition”) is attached as Exhibit C.

TIMELINESS OF REMOVAL

2. Defendant was served with Plaintiff’s Petition on September 14, 2022.

3. This Notice of Removal is timely because it is being filed on October 14, 2022, which was served on September 14, 2022 (i.e., within thirty (30) days of service of Plaintiff’s

¹ Defendant is incorrectly named ICE Enterprises, Inc. It is correctly named ICE Enterprise, LLC.

Petition). *See* 28 U.S.C. § 1446(b). Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the lawsuit has been pending is in this district and division.

JURISDICTION UNDER 28 U.S.C. §§ 1331, 1332 and §1441²

4. This Court has original subject matter jurisdiction of the State Court Lawsuit under 28 U.S.C. § 1331, in that this case arises under the Constitution, laws, or treaties of the United States and this district court has original jurisdiction.

5. In his Petition, Plaintiff asserts claims under and seeks damages under the Telephone Consumer Protection Act (“TCPA”) 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200. *See* Ex. C, at ¶¶ 5.2-6.3, 9.3, 9.4-9.9; 12.3; and 15.1.2.

6. Additionally, this Court has original subject matter jurisdiction of the State Court Lawsuit under 28 U.S.C. § 1332, in that (1) the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (2) is between citizens of different states.

7. In his Petition, Plaintiff specifically allege damages in excess of \$1,000,000. *See* Exhibit C, at ¶ 13.1. The amount in controversy therefore exceeds \$75,000.

8. Defendant is a limited liability company formed under the laws of the State of Idaho. It is made up of two members, David Drake and Jeffery Petty, each of whom are individuals residing in Idaho; therefore, Defendant is a citizen of the State of Idaho.

9. Plaintiff is an individual residing in Denton County, Texas; therefore, Plaintiff is a citizen of the State of Texas.

10. Because Plaintiff is a citizen of Texas and Defendant is a citizen of Idaho, complete diversity of citizenship exists between Plaintiff and Defendant. The amount in

² The jurisdictional allegations of this Notice were true at the time the State Court Action was commenced and remain true as of the date of filing of this Notice of Removal.

controversy is in excess of \$1,000,000. Accordingly, there is complete diversity of citizenship, and the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs. This makes this case removable under 28 U.S.C. § 1441.

PROCEDURAL REQUIREMENTS

11. Defendant reserves the right to submit additional evidence and assert supplemental grounds in support of removal as appropriate in the future. By virtue of this Notice of Removal, Defendant does not waive its right to assert any and all claims, defenses, or other motions permitted under the Federal Rules of Civil Procedure. This Notice of Removal is being filed subject to any and all such claims, defenses and other motions under the Federal Rules of Civil Procedure.

12. In the State Court Lawsuit, Plaintiff did request a trial by jury.

13. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly give written notice to all other parties and will file a copy of the notice with the clerk of the State Court Action.

14. Pursuant to Local Rule CV 81(c), attached to this Notice are:

- a. A civil cover sheet and supplemental civil cover sheet for a removed case (Ex. A);
- b. A copy of the state court docket sheet (Ex. B);
- c. A copy of all pleadings that assert causes of action (Ex. C);³ and
- d. A copy of all process and orders served upon the party removing the case to this Court as required by 28 U.S.C. § 1446(a) (Ex. D).

15. Removal of this action is proper under 28 U.S.C. § 1441, since it is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter under 28 U.S.C. §§ 1331 and 1332. Removal of this action is proper under 28 U.S.C. § 1441(b)(2) because no defendant who is a citizen of Texas has been properly joined and served.

³ This notice is filed prior to ICE's filing of its answer.

16. Pursuant to 28 U.S.C. § 1446(d), written notice of filing of this Notice will be given to all adverse parties promptly after the filing of this Notice. Pursuant to 28 U.S.C. § 1446(d), a true and correct copy of this Notice will be filed with the 431st Judicial District Court of Denton County, Texas promptly after the filing of this Notice.

CONCLUSION

17. Defendant hereby timely removes this action from to the 431st Judicial District Court of Denton County, Texas to this Court.

Dated: October 14, 2022

Respectfully submitted,

/s/ Dee Kelly, Jr.

Dee Kelly Jr.

State Bar No. 11217250

dee.kelly@kellyhart.com

KELLY HART & HALLMAN LLP

201 Main Street, Suite 2500

Fort Worth, Texas 76102

Tel. (817) 878-2500

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing is being served on all counsel of record by a manner authorized by Federal Rules of Civil Procedure 5(b)(2), on October 14, 2022:

Chris Miltenberger
Law Offices of Chris Miltenberger, PLLC
1360 N. White Chapel Rd., Suite 200
Southlake, Texas 76092
Tel. (817) 416-5060
chris@crmlawpractice.com

ATTORNEY FOR PLAINTIFF

/s/ Dee Kelly, Jr.

Dee Kelly, Jr.

EXHIBIT A

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Matt McCormick, Individually and on Behalf Two Classes

(b) County of Residence of First Listed Plaintiff Denton County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Law Office of Chris R. Miltenberger, 1360 N. White
Chapel, Ste 200, Southlake, TX 76092; (817) 416-5060**DEFENDANTS**

ICE Enterprises, Inc.

County of Residence of First Listed Defendant Ada County, ID
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Dee Kelly, Jr., Kelly Hart & Hallman, LLP, 201 Main St., Ste.
2500, Fort Worth, TX 76102; (817) 332-2500**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input checked="" type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 1332 & 1446Brief description of cause:
Violation of Telephone Consumer Protection Act**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.DEMAND \$
over \$1,000,000.00CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Jim JohnsonDOCKET NUMBER 22-7396-431

DATE

10/14/2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Dee J. Kelly Jr.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SUPPLEMENTAL CIVIL COVER SHEET
FOR A REMOVED CASE (Local Rule CV-81)**

1.

(a) List of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (e.g. pending, dismissed):

Matt McCormick, Individually - **Plaintiff - Pending**

Matt McCormick, on behalf of Two Classes - **Plaintiff - Pending**

ICE Enterprise, Inc. - **Defendant - Pending**

(b) List of attorneys involved

Chris R. Miltenberger
State Bar No. 14171200
1360 N. White Chapel, Suite 200
Southlake, Texas 76092
Phone: (817) 416-5060

**ATTORNEY FOR PLAINTIFF
MATT MCCORMICK, INDIVIDUALLY
AND ON BEHALF OF TWO CLASSES**

Dee Kelly Jr.
State Bar No. 11217250
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Phone: (817) 878-2500

**ATTORNEY FOR DEFENDANT
ICE ENTERPRISES, INC.**

2. JURY DEMAND

Was a jury demand made in State Court? X Yes No

By Plaintiff on September 1, 2022.

3. COURT FROM WHICH CASE IS BEING REMOVED

431st Judicial District Court
Denton County
1450 E. McKinney St., 4th Floor
Denton, Texas 76209

EXHIBIT B

REGISTER OF ACTIONS**CASE NO. 22-7396-431****Matt McCormick, Individually and on Behalf Two Classes VS. ICE Enterprise, Inc.**§
§
§
§
§
§

Case Type: **Debt/Contract: Consumer/DTPA**
 Date Filed: **09/01/2022**
 Location: **431st Judicial District Court**
 Judicial Officer: **Johnson, James S.**
 File Custody/Location: **District Clerk's Office**

PARTY INFORMATION

Defendant	ICE Enterprise, Inc.	Attorneys Chris R. Miltenberger <i>Retained</i> 817-416-5060(W)
Plaintiff	McCormick, Matt	Chris R. Miltenberger <i>Retained</i> 817-416-5060(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS			
09/01/2022	<u>Original Petition/Application</u> <i>Plaintiff's Original Individual and Class Petition</i> Filing Party: McCormick, Matt		
09/08/2022	Citation <i>env#68051400</i>		
	ICE Enterprise, Inc.	Requested By McCormick, Matt	
	Anticipated Server	Served	09/14/2022
	Private Process Server	Anticipated Method	Personal
		Returned	09/15/2022
09/15/2022	<u>Service Returned</u> <i>Citation for ICE Enterprises, Inc</i>		

FINANCIAL INFORMATION

	Plaintiff McCormick, Matt		
	Total Financial Assessment		358.00
	Total Payments and Credits		358.00
	Balance Due as of 10/14/2022		0.00
09/07/2022	Transaction Assessment		358.00
09/07/2022	TexFile Payment	Receipt # 2022-25995	(221.00)
09/07/2022	State Credit	McCormick, Matt	(137.00)

EXHIBIT C

CITATION -TRC 99 and 106

THE STATE OF TEXAS

COUNTY OF DENTON

CAUSE NO. 22-7396-431

TO: ICE Enterprise, Inc., 963 S. Orchard St. Ste 200, Boise, ID 83705 (or wherever he/she may be found)

Delivered 9/14/2022

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may also be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Court:	431st Judicial District Court 1450 E. McKinney, 4th Floor, Denton, TX 76209
Cause No.:	22-7396-431
Date of Filing:	September 01, 2022
Document:	Plaintiff's Original Individual and Class Petition
Parties in Suit:	Matt McCormick; ICE Enterprise, Inc.
Clerk:	David Trantham, District Clerk, 1450 E. McKinney, Suite 1200, Denton, TX 76209
Party or Party's Attorney:	Chris R. Miltenberger 1360 N. White Chapel, Suite 200, Southlake, TX 76092

Issued under my hand and seal of this said court on this the 8th day of September, 2022.

David Trantham, District Clerk
Denton County, Texas

BY:

Jennifer Croy

Deputy

Service Return

Came to hand on the _____ day of _____, 20____, at _____ m., and executed on the _____ day of _____, 20____, at _____ M by delivering to the within named _____ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Individual and Class Petition, at _____.

Service Fee: \$ _____

Sheriff/Constable_____
County, Texas

Service ID No. _____

Deputy/Authorized Person**VERIFICATION**

On this day personally appeared _____ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the _____ day of _____, 20____

Notary Public

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 68051400

Status as of 9/8/2022 9:34 AM CST

Associated Case Party: Matt McCormick

Name	BarNumber	Email	TimestampSubmitted	Status
Chris Miltenberger		chris@crmlawpractice.com	9/8/2022 9:33:37 AM	SENT

22-7396-431

No. _____

Matt McCormick, individually	§	In the District Court
and on behalf two classes	§	
	§	
Plaintiff		
	§	
vs.	§	District Court # ____
	§	
ICE Enterprise, Inc.	§	
	§	
Defendant	§	Denton County, Texas

PLAINTIFF'S ORIGINAL INDIVIDUAL AND CLASS PETITION

Plaintiff, Matt McCormick ("**Plaintiff**") files this action against ICE Enterprises, Inc. ("**Defendant**") and respectfully shows the Court as follows:

1. Discovery Control Plan.

- 1.1. Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190 and requests the Court to enter the appropriate orders.

2. Rule 28

- 2.1. Pursuant to TEX. R. CIV. P. 28, Plaintiff moves that any partnership, unincorporated association, private corporation or individual doing business under an assumed name substitute a true name.

3. Parties.

- 3.1. Plaintiff is, and at all times mentioned herein was, a citizen and resident of Prosper, Denton County, Texas.
- 3.2. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).
- 3.3. Plaintiff is, and at all times mentioned herein was, a "person" as defined by Tex. Bus. & Com. Code § 1.201(b)(27).

3.4. Plaintiff is, and at all times mentioned herein was, a “purchaser” as defined by Tex. Bus. & Com. Code § 302.001(3).

3.5. Defendant is a corporation with an address of 963 S. Orchard St. Ste.200 Boise, ID 83705.

3.6. Defendant is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

3.7. Defendant is, and at all times mentioned herein was, a “person” as defined by Tex. Bus. & Com. Code § 1.201(b)(27).

3.8. Defendant is, and at all times mentioned herein was, a “seller” as defined by Tex. Bus. & Com. Code § 302.001(5).

4. Jurisdiction and Venue.

4.1. Plaintiff claims for himself and the Class Members monetary relief over \$1,000,000 and non-monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys’ fees, which is within the jurisdictional limits of this Court.

4.2. Venue is proper in Denton County because Plaintiff resides in Denton County and the actions complained about occurred in Denton County. Defendant made calls to a resident of Denton County.

5. Nature of Suit

5.1. As the Supreme Court has explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls.” The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress and state legislatures have been fighting back.

5.2. This action arises out of Defendant’s, practice of making telemarketing calls to individuals on the National Do-Not-Call Registry without prior

express written consent (or any consent whatsoever), in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. ("TCPA") and provisions of the Texas Business & Commerce Code.

- 5.3. Plaintiff's telephone number was registered on the National Do-Not-Call Registry at the time of the calls and was so registered for more than 31 days prior to the calls.

6. THE NATIONAL DO NOT CALL REGISTRY

- 6.1. The national Do Not Call Registry (the "Registry") allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. See 47 C.F.R. § 64.1200(c)(2). A listing on the Registry "must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator." *Id.*
- 6.2. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to residential and wireless telephone subscribers to the Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).
- 6.3. The regulations exempt from liability a caller who has obtained the subscriber's signed, written agreement to receive telephone solicitations from the caller. 47 C.F.R. § 64.1200(c)(2)(ii). That agreement must also include the telephone number to which the calls may be placed. *Id.*

7. TEXAS' ANTI SOLICITATION AND ROBO-CALLING STATUTES

- 7.1. §302.101 of the Texas Business & Commerce Code prohibits sellers from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.
- 7.2. Sellers engaging in telephone solicitations are required to register, among other things, list "each telephone number to be used by the seller and the address where each telephone using the number is located." §302.151(10).

7.3. §302.302(a) of the Texas Business & Commerce Code provides that a person who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation. Furthermore, §302.302(d) provides that the party bringing the action is also entitled to recover all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorneys' fees.

7.4. Pursuant to § 305.053(a) of the Texas Business & Commerce Code, a person who receives a communication that violates 47 U.S.C. § 227, or a regulation adopted under that provision, may bring an action against the person who originates the communication for an injunction, damages or both.

8. GENERAL FACTUAL ALLEGATIONS

8.1. Plaintiff is the user of his cell phone number (XXX) XXX-9117.

8.2. Plaintiff's cellular telephone number is a residential number.

8.3. Plaintiff's cellular telephone number is a telephone number assigned to a cellular telephone service.

8.4. Plaintiff's cell phone number has been on the National Do-Not-Call Registry since July 1, 2014.

8.5. Plaintiff did not provide prior express written consent (or any consent) to Defendant for the calls made by Defendant to Plaintiff.

8.6. Defendant made telephone solicitations by calling Plaintiff's cellular phone on at least the following occasions:

8.6.1. January 25, 2022; April 10, 2022; June 7, 2022; June 10, 2022 (twice); June 14, 2022; and June 15, 2022 (twice).

8.7. Defendant called Plaintiff in an effort to sell Defendant's services to Plaintiff. Those services include, but are not limited to, helping individuals complete Department of Transportation registrations. Those services are listed by Defendant on its website¹ as:

- **US DOT Number Service:** Let us obtain a US DOT number for you.
- **MCS-150 Update Service:** Let us correct or update US DOT numbers (MSCA-1 form or MCS-150 update form) for you.
- **MC Number Interstate Operating Service:** Let us help you set up your MC authority number.
- **Unified Carrier Registration (UCR) Service:** Let us register or renew your annual UCR for you.
- **Process Agent BOC-3 Filing Service:** Let us help you submit your BOC-3 form and establish process agents.
- **DOT Authority Monitoring Service:** Let us monitor your operating authority and make sure your credentials are always up-to-date and in compliance.

8.8. Prior to receiving the calls Plaintiff had no established business relationship with Defendant. To this day Plaintiff does not have an established business relationship with Defendant.

8.9. Defendant knowingly violated the Texas Business & Commerce Code TCPA when it made the Calls to Plaintiff and Defendant's violations were willful.

8.10. The Calls were not made for emergency purposes.

8.11. Defendant has failed to register pursuant to § 302.101 of the Texas Business & Commercial Code to provide telephone solicitations. The <https://direct.sos.state.tx.us/telephone/telephonesearch.asp> site ("Texas Registration Database") does not contain Defendant's registration.

¹ See <https://iceenterprise.biz/> (last accessed August 15, 2022).

8.12. Defendant does not qualify for an exemption under § 302.052 through § 302.061 of the Texas Business & Commercial Code or any section of Chapter 302 of the Texas Business & Commercial Code.

9. DEFENDANT'S LIABILITY

9.1. Because Defendant's calls constitute telemarketing, Defendant was required to obtain prior express consent from the persons to whom Defendant made the calls.

9.2. Plaintiff never provided Defendant with any consent, written or otherwise.

9.3. In addition, the TCPA prohibits making "any telephone solicitation" to a telephone number on the National Do-Not-Call Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c); 47 C.F.R. § 64.1200(e).

9.4. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

9.5. A listing on the National Do Not Call Registry "must be honored indefinitely" *Id.*

9.6. Plaintiff's number was on the National Do-Not-Call Registry for more than 31 days prior to the calls.

9.7. Plaintiff received more than one such telemarketing call in a 12-month period, as required by 47 C.F.R. § 64.1200© for violations of 47 U.S.C. § 227(c).

9.8. Pursuant to § 305.053(a) of the Texas Business & Commerce Code, a person who receives a communication that violates 47 U.S.C. § 227, or a regulation adopted under that provision, may bring an action against the person who originates the communication for an injunction, damages or both.

9.9. As set forth above, Defendant violated 47 U.S.C. § 227, or a regulation adopted under that provision.

9.10. Accordingly, Plaintiff is entitled to a permanent injunction, and the greater of \$500.00 for each violation or Plaintiff's actual damages for each call made by Defendant. *See* Tex. Bus. & Com. Code § 305.053(b).

9.11. Plaintiff is entitled to \$1,500 per call if Defendant's actions are found to be knowing or intentional. *See* Tex. Bus. & Com. Code § 305.053(c).

9.12. In addition, pursuant to § 302.101 of the Texas Business & Commerce Code, a seller is prohibited from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.

9.13. Defendant violated § 302.101 of the Texas Business & Commerce Code when it engaged in telephone solicitation without obtaining a registration certificate from the Office of the Secretary of State of Texas.

9.14. Accordingly, for violations of § 302.101 of the Texas Business & Commerce Code, Plaintiff is entitled to an award of no more than \$5,000 for each violation pursuant to § 302.302(a) of the Texas Business & Commerce Code.

9.15. In addition, pursuant to § 302.302(d) of the Texas Business & Commerce Code, Plaintiff is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

9.16. Plaintiff was harmed by Defendant's actions of calling his residential phone while his number was on the Do Not Call Registry, without consent, in the following manners:

9.16.1. Plaintiff's privacy was invaded by Defendant;

9.16.2. Plaintiff was harassed and abused by Defendant's telephone calls;

9.16.3. Defendant's calls were a nuisance to Plaintiff;

9.16.4. Defendant's calls used the battery on Plaintiff's cell phone and Plaintiff had to pay to recharge the battery;

9.16.5. Plaintiff's phone was unavailable for other use while processing the illegal calls from Defendant;

9.16.6. Defendant illegally seized Plaintiff's telephone line while it made illegal calls to Plaintiff's cellular telephone;

9.16.7. Plaintiff's telephone line was occupied by multiple unauthorized calls from Defendant;

9.16.8. Defendant's seizure of Plaintiff's telephone line was intrusive; and

9.16.9. Plaintiff was inconvenienced by Defendant's calls, by among other things, hearing his ring and having to check the calling party.

9.17. These forms of actual injury are sufficient for standing and jurisdictional purposes.

10. Class Action Allegations.

10.1. The proposed Classes satisfy the requirements for a class action.

10.2. Plaintiff brings the claims for relief alleged in this petition pursuant to TEX. R. CIV. P. 42 on behalf of himself and classes defined as follows:

10.2.1. "Texas § 302.101 Class"

10.2.1.1. Plaintiff and all residents of the State of Texas, from four years prior to the filing of this Petition through the date of certification, to whose telephone number Defendant placed (or had placed on its behalf) a telephone solicitation when Defendant did not hold a registration certificate as required by Tex. Bus. & Com. Code § 302.101.

10.2.2. "Texas § 305.053"

10.2.2.1. Plaintiff and all residents of the State of Texas, from four years prior to the filing of this Petition through the date of certification, to whose telephone number Defendant: (1) placed (or had placed on its behalf) a call in violation of 47 U.S.C. § 227(c).

10.2.3. The Texas Classes are collectively referred to herein as the "Classes."

10.2.4. The following persons are excluded from the Classes:

- 10.2.4.1. (i) the judge(s) assigned to this case and his or her staff;
- 10.2.4.2. (ii) governmental entities;
- 10.2.4.3. (iii) Defendants and their affiliates; and
- 10.2.4.4. (iv) persons who have previously released Defendant of the claims raised by this case.

10.3. The Members of the Classes for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

10.4. For example, numerous consumers have posted complaints about Defendant's illegal telemarketing practices on Google Reviews:

10.4.1. "It's been three years guys, come on. Calling incessantly to tell you something was filed incorrectly. Playing under the idea that they're just trying to help. Arguing with anything you say in regards to being removed from call lists. Then after being rude enough to argue with

your requests, they try to tell you that you're being rude. How is this even a business? Total joke." Steven Bierlink, 1 Star Google Review.²

10.4.2. "They are extremely unprofessional. They call you over and over trying to get you to let them file your DOT services. They spam call me all the time leaving voice messages. I have asked them multiple times to remove me from there call list. They robo call me from different numbers all the time like i am going to change my mind." The Junk Transporter, 1 Star Google Review³

10.4.3. "You are violating the Do Not Call list. You use an auto dialer to call me 24 times in a row. I will be reporting which individual call which I believe is a violation of \$10,000 per time and I will provide them proof along with your (Michael Montgomery) recorded voice. Wish you the best" - Martin, 1 Star Google Review⁴

10.4.4. "SPAM CALL
Ignorant people when you answer
Refuses to remove numbers from call list
ONLY OUT TO LIE TO YOU AND TRY TO GET YOUR
MONEY" - Dan Roylance, 1 Star Google Review.⁵

10.5. Other consumers have filed complaints with the Better Business Bureau:

10.5.1. "Since the middle of September, we have been getting daily sales calls from this company (844) 257-7802. It is the same prerecorded message which implies that they are part of the government / government agency. I finally called to ask that our company be taken off of this list. I mentioned that the calls have basically become a form of harassment. Instead of offering to take our number off of the list, they told me that they were within their right to continue to call. Both

² <https://www.google.com/search?client=firefox-b-1-d&q=Interstate+Compliance+Enterprise#lrd=0x54ae562cecad3fdb:0xfa6df64af053e767,1,,> (last accessed August 15, 2022).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

yesterday and today they called twice per day.” BBB Complaint, October 10, 2019⁶

10.5.2. “They call constantly telling me to do a biennial update to my FMCSA, however I have no, nor have I ever had any DOT vehicles and when I asked to be removed they tell me I have to pay them to get them to go away. Not to mention I have told them I am no longer the owner of the company they are inquiring about. The company was disbanded over a year ago. They threaten fines of \$1000 per day for not filing with them. They are nothing more than a shakedown. They have started finding and contacting my family and friends to push me to pay them for a service I don’t use for a company I don’t own. They have gone as far to contact my dead fiancé’s parents to push their claim.” BBB Complaint, June 9, 2020⁷

10.5.3. “I do not know who these people are, I am a private citizen and no nothing of this “D.O.T. by anular new is currently do Federal Motor Carrier Safety Administration license” I have never owned a company, I would like to stop calling my cell phone multiple times a day. This is harrassment.....” BBB Complaint, May 13, 2021⁸

10.5.4. “This business, interstate compliance enterprise keeps harassing us. We live in Oregon, not Idaho. We farm, not haul stuff. They need to stop harassing us. Thanks.” BBB Complaint, May 14, 2021⁹

10.5.5. “In 2019 we signed up our usdot truck for a haul. We don’t use it anymore and don’t need it. They are calling my phone weekly threatening us with an audit or fines. They won’t stop. Please help me. I told them to stop and it’s getting worse.” BBB Complaint, May 21, 2021¹⁰

⁶ See <https://www.bbb.org/us/ld/nampa/profile/compliance-consulting/interstate-compliance-enterprise-1296-1000075850/complaints> (last accessed August 15, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

10.5.6. "These guys are a fraud they call **** times per week with robo calls claiming to need your binary update and want money when I don't even have an account. They never answer the phone or respond to stop calling just up the calls per week. I put a call block on and they just switch their numbers" BBB Complaint, December 8, 2021¹¹

10.6. The exact number and identities of the persons who fit within the Classes are ascertainable in that Defendant and third parties maintain written and electronically stored data showing:

10.6.1. The time period(s) during which Defendant placed its calls;

10.6.2. The telephone numbers to which Defendant placed its calls;

10.6.3. The telephone numbers for which Defendant had prior express written consent;

10.6.4. The purposes of such calls; and

10.6.5. The names and addresses of Class members.

10.7. The Classes are comprised of hundreds, if not thousands, of individuals.

10.8. There are common questions of law and fact affecting the rights of the Members of the Classes, including, *inter alia*, the following:

10.8.1. Whether Defendant (or someone acting on its behalf) makes solicitations and telemarketing calls to telephone numbers registered on the National Do-Not-Call Registry;

10.8.2. Whether Defendant had the requisite registration certificate as required by Tex. Bus. & Com. Code § 302.101 when making telephone solicitations;

¹¹ *Id.*

10.8.3. Whether Plaintiff and the Classes were damaged thereby, and the extent of damages for such violations; and

10.8.4. Whether Defendant should be enjoined from engaging in such conduct in the future.

10.9. Plaintiff is a member of the Classes in that Defendant placed two or more telemarketing calls to his phone in a one-year period when his telephone number was on the National Do-Not-Call Registry.

10.10. Plaintiff's claims are typical of the claims of the Members of the Classes in that they arise from Defendant's uniform conduct and are based on the same legal theories as these claims.

10.11. Plaintiff and all putative Members of the Classes have also necessarily suffered concrete harm in addition to statutory damages, as all Members of the Classes spent time tending to Defendant's unwanted calls and suffered a nuisance and an invasion of their privacy.

10.12. Plaintiff has no interests antagonistic to, or in conflict with, the Classes.

10.13. Plaintiff will thoroughly and adequately protect the interests of the Classes, having retained qualified and competent legal counsel to represent him and the Classes.

10.14. Defendant has acted and refused to act on grounds generally applicable to the Classes, thereby making injunctive and declaratory relief appropriate for the Classes.

10.15. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

10.16. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member make individual actions uneconomical.

10.17. Common questions will predominate, and there will be no unusual manageability issues.

11. FIRST CAUSE OF ACTION - Violations of Texas Business and Commerce Code, § 302.101

11.1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

11.2. Defendant failed to obtain a registration certificate from the Office of the Secretary of State of Texas pursuant to violated § 302.101 of the Texas Business and Commerce Code.

11.3. Defendant placed telephone solicitations to Plaintiff's and the Class Members' telephone numbers.

11.4. Defendant's telephone solicitations were made from a location in Texas or to Plaintiff and the Class Members located in Texas.

11.5. Plaintiff and the Class Members are entitled to an award of up to \$5,000 for each violation and all reasonable cost of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

12. SECOND CAUSE OF ACTION - Violations of Texas Business and Commerce Code, § 305.053

12.1. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

12.2. Defendant placed in a 12-month period at least one and may time more than one telemarketing telephone calls to Plaintiff's and the Class Members' respective telephone numbers.

12.3. Each of these calls violated 47 U.S.C. § 227(c).

12.4. Plaintiff and the Class Members are entitled to:

12.4.1. a permanent injunction to prevent any further violations of the Texas Business & Commerce Code, Chapter 305;

12.4.2. the greater of \$500 for each violation or Plaintiff's actual damages (*see* Tex. Bus. & Com. Code §304.053(b);

12.4.3. the greater of \$1,500 for each violation or Plaintiff's actual damages for each call made knowingly or intentionally (*see* Tex. Bus. & Com. Code §304.053(c).

13. Claims for Relief

13.1. The Texas Rules of Civil Procedure require that Plaintiff choose among several statements regarding the amount Plaintiff seeks. Accordingly, pursuant to Tex. R. Civ. P. 47, Plaintiff states that he seeks monetary relief over \$1,000,000 and non-monetary relief, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorneys' fees, which is within the jurisdictional limits of this Court.

13.2. Plaintiff also seeks a demand for judgment for all the other relief to which Plaintiff deems himself entitled.

14. Conditions Precedent.

14.1. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

15. Prayer for Relief

15.1. Plaintiff prays for the following relief:

- 15.1.1. An order certifying the Classes as defined above, appointing
Plaintiff as the representatives of the Classes and appointing
Plaintiff's counsel as Class Counsel;
- 15.1.2. An order declaring that Defendant's actions, as set out above,
violate the Texas Business and Commerce Code because they are a
violation of 47 U.S.C. §§ 227 (c) and 47 C.F.R. §§64.1200(c);
- 15.1.3. An order declaring that Defendant's actions, as set out above,
violate Tex. Bus. & Com. Code § 302.101.
- 15.1.4. An award of statutory damages under the Texas Business and
Commerce Code;
- 15.1.5. An award of treble damages;
- 15.1.6. An award of reasonable attorneys' fees and costs, including the
costs set forth pursuant to Tex. Bus. & Com. Code § 302.302(d); and
- 15.1.7. All other relief, in law and in equity, to which Plaintiff may be
entitled.

16. Jury Demand

- 16.1. Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted:

By: /s/ Chris R. Miltenberger
Chris R. Miltenberger
Texas State Bar Number 14171200

The Law Office of Chris R. Miltenberger,
PLLC

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Attorney for Plaintiff

EXHIBIT D

CITATION -TRC 99 and 106

THE STATE OF TEXAS

COUNTY OF DENTON

CAUSE NO. 22-7396-431

TO: ICE Enterprise, Inc., 963 S. Orchard St. Ste 200, Boise, ID 83705 (or wherever he/she may be found)

Delivered 9/14/2022

Notice to defendant: You have been sued. You may employ an attorney. If you, or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the first Monday following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. In addition to filing a written answer with the clerk, you may also be required to make initial disclosures to the other parties of this suit. These disclosures generally must be made no later than 30 days after you file your answer with the clerk. Find out more at TexasLawHelp.org.

Court:	431st Judicial District Court 1450 E. McKinney, 4th Floor, Denton, TX 76209
Cause No.:	22-7396-431
Date of Filing:	September 01, 2022
Document:	Plaintiff's Original Individual and Class Petition
Parties in Suit:	Matt McCormick; ICE Enterprise, Inc.
Clerk:	David Trantham, District Clerk, 1450 E. McKinney, Suite 1200, Denton, TX 76209
Party or Party's Attorney:	Chris R. Miltenberger 1360 N. White Chapel, Suite 200, Southlake, TX 76092

Issued under my hand and seal of this said court on this the 8th day of September, 2022.

David Trantham, District Clerk
Denton County, Texas

BY:

Jennifer Croy

Deputy

Service Return

Came to hand on the _____ day of _____, 20____, at _____ m., and executed on the _____ day of _____, 20____, at _____ M by delivering to the within named _____ in person a true copy of this citation, with attached copy(ies) of the Plaintiff's Original Individual and Class Petition, at _____.

Service Fee: \$ _____

Sheriff/Constable_____
County, Texas

Service ID No. _____

Deputy/Authorized Person**VERIFICATION**

On this day personally appeared _____ known to me to be the person whose name is subscribed on the foregoing instrument and who has stated: upon penalty of perjury, I attest that the foregoing instrument has been executed by me in this cause pursuant to the Texas Rules of Civil Procedure. I am over the age of eighteen years and I am not a party to or interested in the outcome of this suit, and have been authorized by the Denton County Courts to serve process.

Subscribed and sworn to before me on this the _____ day of _____, 20____

Notary Public

AFFIDAVIT OF SERVICE

State of Texas

County of Denton

431st Judicial District Court

Case Number: 22-7396-431

Plaintiff:

MATT MCCORMICK, INDIVIDUALLY AND ON BEHALF TWO CLASSES

vs.

Defendant:

ICE ENTERPRISE, INC.

For: Chris Miltenberger

Chris R. Miltenberger, PLLC

Received by Capitol Process Service on the 12th day of September, 2022 at 9:29 am to be served on ICE Enterprise, Inc., 963 S. Orchard Street, Suite 200, Boise, ID 83705. I, John Muir, being duly sworn, depose and say that on the 14th day of September 2022 at 12:34P.m., executed service by delivering a true copy of the Citation, Plaintiff's Original Individual and Class Petition in accordance with state statutes in the manner marked below:

() PUBLIC AGENCY: By serving _____ as _____ of the within-named agency.

() SUBSTITUTE SERVICE: By serving _____ as _____

☒ CORPORATE SERVICE: By serving David Drake as owner of ICE ENTERPRISES INC

() OTHER SERVICE: As described in the Comments below by serving _____ as _____

() NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: male, white, grey hair, 6ft 6in, 190lbs, 55 years old.
no facial hair.

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 14 day of Sept. 2022 by the affiant who is personally known to me.

[Signature]
NOTARY PUBLIC



[Signature]
PROCESS SERVER # N/A
Appointed in accordance with State Statutes

Capitol Process Service
P.O. Box 1518
Georgetown, TX 78627-1518
(512) 336-7378

Our Job Serial Number: 2022000635

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Chris Miltenberger on behalf of Chris Miltenberger

Bar No. 14171200

chris@crmlawpractice.com

Envelope ID: 68279826

Status as of 9/20/2022 2:50 PM CST

Associated Case Party: Matt McCormick

Name	BarNumber	Email	TimestampSubmitted	Status
Chris Miltenberger		chris@crmlawpractice.com	9/15/2022 9:52:49 AM	SENT